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**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

70

Application Number

09/502,313

Filing Date

2/11/2000

First Named Inventor

Keith Rose

Art Unit

3624

Examiner Name

Campen, Kelly

Attorney Docket Number

1142

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment / Reply



After Final



Affadavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Response to Missing Parts/
Incomplete ApplicationResponse to Missing Parts
under 37 CFR 1.52 or 1.53Assignment Papers
(for an Application)

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional ApplicationPower of Attorney, Revocation
Change of Correspondence Address

Terminal Disclaimer



Request for Refund



CD, Number of CD(s) _____

After Allowance Communication
to Technology Center (TC)Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please
Identify below):

Postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENTFirm
or
Individual name

Charles E. Gottlieb

Signature

Date

July 19, 2004

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name

Kristen Jones

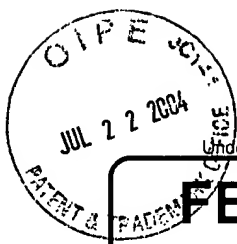
Signature

Date

July 19, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, PO Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 330)

Complete if Known

Application Number	09/502,313
Filing Date	2/11/2000
First Named Inventor	Keith Rose
Examiner Name	Campen, Kelly
Art Unit	3624
Attorney Docket No.	1142

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:Deposit Account Number
Deposit Account Name

07-1738

Charles E. Gottlieb

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments☐ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
16	- 20** =		
Independent Claims	2	- 3** =	
Multiple Dependent			

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	**Reissue independent claims over original patent
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity

Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge-late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2520	1812	2520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1840*	1805	1840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1480	2254	740	Extension for reply within fourth month	
1255	2010	2255	1005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330
1403	290	2403	145	Request for oral hearing	
1451	1510	1451	1510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1330	2453	665	Petition to revive - unintentional	
1501	1330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 330)

SUBMITTED BY

Name(Print/Type)	Charles E. Gottlieb	Registration No. (Attorney/Agent)	38,164	Telephone	650-328-0100
Signature	Charles E. Gottlieb	Date	7/19/2004		

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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Keith Rose et. al.
SERIAL NO: 09/502,313
FILING DATE: 2/11/2000
TITLE: METHOD AND APPARATUS FOR RECEIVING A SUBSCRIPTION
FOR A SECURITY
GROUP ART UNIT: 3624
ATTY DOCKET NO: 1142
EXAMINER: Campen, Kelly

CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313 on the date shown below:

Date: 7/19/2004

Kristen Jones
Kristen Jones

THE HONORABLE COMMISSIONER OF PATENTS, ALEXANDRIA, VA 22313

07/23/2004 GWORDDF1 00000037 09502313

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SIR:

APPEAL BRIEF UNDER 37 C.F.R. 1. 192

1. Real Party in Interest

The real party in interest is Charles Schwab & Co., Inc.

2. Related Appeals and Interferences.

There are no related appeals or interferences.

3. Status of Claims.

Claims 1-15 remain in the application and are finally rejected under 35 U.S.C. 103(a).

Examiner has rejected the claims using references that are published patent applications, both of which were filed after the filing date of the present application, February 11, 2000. Each of the references claims priority from several different provisional applications, only some of which predate the February 11, 2000 filing date of the present application. Thus, unless the portion referred to by Examiner was in the subset of the provisional applications that predate the filing date of the present application, they are not prior art to the application and cannot be used.

However, Examiner has not asserted that any of the provisionals from which priority is claimed and that predate the filing date of Applicants' application contain

the portions in the later filed applications to which Examiner refers, and Examiner refuses to provide the provisional applications, as Examiner is prohibited from doing, because although the utility applications have been published, they have not issued and Examiner is not permitted to provide them. Applicant's position is that Examiner must either provide the references used to reject the claims or withdraw the rejection.

Examiner refuses to concede that the references must be provided, stating that Examiner is only using the published applications, but giving them an effective filing date of the earliest provisional application in the chain. As support for Examiner's position, Examiner cites, out of context, a portion of the MPEP that describes what effective filing date is to be given to applicant's application, a circumstance where all provisional applications are available to both Examiner and Applicant, and extends it to a reference that happens to be an application, where the provisionals are not available to applicant. Because the out-of-context portion of the MPEP does indeed state that "an application" (albeit the one filed by applicant, not any application) is to be given its earliest provisional date as an effective filing date, Examiner assigns the reference, which is addressed by a

different portion of the same MPEP section to which Examiner points and does not back up Examiner's position, the effective filing date using the rules applicable to Applicant's application, and continues to maintain the rejection based on the provisionals, but refuses to provide the provisionals.

Applicant appeals all claims 1-15.

4. Status of Amendments.

Amendment B was filed subsequent to final rejection and is currently unentered. It should be entered by the Examiner.

5. Summary of Invention.

The issues for appeal are independent of the invention itself, as they involve issues of law and rules, not fact. However, to ensure that this appeal brief is complete, the following summary is provided.

The invention consists of a method and computer program product for receiving a request for a home page (page 8, line 8); providing the home page (for example, as described at locations including, without limitation, page 8, line 8) comprising a notice of a subscription offering and a link to a web page (for example, as described at locations including, without limitation, page 9, lines 1-

3); receiving a request for the web page (for example, as described at locations including, without limitation, page 9, lines 14-15); providing web page information allowing a user to subscribe to the mutual fund responsive to the receiving the request for the web page (for example, as described at locations including, without limitation, page 9, line 15-page 10, line 4); and receiving an indication of an amount of money to be invested in the mutual fund (for example, as described at locations including, without limitation, page 10, line 2 - page 10, line 8).

6. Issues.

A. Under a portion of MPEP 706.02 which deals with the date of a reference that is a published application and the date of Applicant's application, may an Examiner apply the rules for determining the priority date of applicant's application to the date of the reference in spite of the fact that the MPEP section dealing with determining the date of the reference states unequivocally that Examiner cannot do what Examiner is attempting to do, merely because the reference happens to be an application and the portion of the MPEP that Examiner relies upon does not use the term "applicant's application" but just uses the term "the application"?

B. What is the actual standard for determining the effective filing date of a published application?

C. How must Examiner prove the effective filing dates of a published application if Examiner wishes to assert that a published application has an effective filing date earlier than the filing date of the published application?

D. Given what Examiner has provided Applicant thus far, what are the effective dates of the D'Amico and Stewart references, and do they qualify as prior art against Applicants' Application.

7. Grouping of Claims.

The claims stand or fall together.

8. Argument.

As noted above, Examiner has rejected the claims using a 35 USC 103(a) combination of references that are published patent applications, both of which were filed after the February 11, 2000 filing date of the present application. One reference was filed on February 10, 2001 and another was filed on November 30, 2000.

Each of the references claims priority from several different provisional applications, only some of which predate the February 11 filing date of the present

application. Thus, unless the portion referred to by Examiner to reject the claims was described in the subset of the provisional applications that predate the filing date of the present application, one or both are not prior art to the application and cannot be used.

However, Examiner refuses to provide the provisional applications, as Examiner is prohibited from doing, because although the utility applications have been published, they have not issued and Examiner is not permitted to provide them. Applicant's position is that Examiner must either provide the references used to reject the claims or withdraw the rejection.

Examiner refuses to concede that the references must be provided, stating that Examiner is only using the published applications, but giving them an effective filing date of the earliest provisional application in the chain. As support for Examiner's position, Examiner cites, out of context, a portion of the MPEP that describes what effective filing date is to be given to applicant's application, a circumstance where all provisional applications are available to both Examiner and Applicant, and extends it to a reference that happens to be an application, where the provisionals are not available to

applicant. Because the out-of-context portion of the MPEP does indeed state that "an application" (albeit the one filed by applicant, not any application) is to be given its earliest provisional date as an effective filing date, Examiner assigns the reference, which is addressed by a different portion of the same MPEP section to which Examiner points and does not back up Examiner's position, the effective filing date as if it was Applicant's application, and continues to maintain the rejection based on the provisionals, but refuses to provide the provisionals.

A. Examiner May Not Apply the Portion of MPEP Section 706.02 That Describes the Effective Filing Date of Applicant's Application to Obtain an Effective Filing Date of a Reference Merely Because the Reference Happens to be an Application.

Examiner stated in the final office action that Examiner was relying upon the base part of MPEP 706.02 as justification for asserting that any published application used as a prior art reference was entitled to the filing date of the earliest provisional application in the chain.

MPEP 706.02(a) states in pertinent part (with emphasis added), "The examiner must also determine the issue or

publication date of the reference so that a proper comparison between the application and reference dates may be made." The distinction between the application and a reference is an important one to keep in mind when reading MPEP 706.02.

MPEP 706.02 has a base portion, and then many sub portions (e.g. 706.02(a)), but the base portion provides rules for determining the effective date of the application and this is the section Examiner uses for assigning the date of the earliest provisional application to the date of the published reference. This section doesn't appear to have been intended to apply to an application used as a reference, it just applies to applicants' application. Examiner is correct in that the base portion of 706.02 does contain language regarding the effective filing date of an application, but Examiner cannot apply that language as the basis of identifying the date of a reference. The application in the base portion of 706.02 is what *applicant* submitted, it is not the reference which Examiner is attempting to assert.

B. The Standard for Proving a Reference Has an Effective Filing Date that Precedes the Actual Filing Date of a Published Application is Set Forth in MPEP 706.02(f)

and Requires the Examiner Prove the Subject Matter is Disclosed in the Earlier Filed Application in Compliance with 35 U.S.C. 112, First Paragraph.

To use a reference as prior art in a 103 rejection, Examiner must have a basis for asserting that each such reference is prior art under 35 USC 102. Here, the Examiner has rejected the claims under 35 USC 103 and therefore, there must be a basis in 35 USC 102.

The reference cannot be 35 U.S.C. 102(b) prior art because its earliest possible effective filing date will not be more than a year prior to the filing date of Applicants' application. The reference cannot be 35 USC 102(a) prior art because, as noted in the last sentence of MPEP 706.02(a), "For 35 U.S.C. 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be applicant's own work." Because the publication date of both references was well after their filing dates, which were well after applicant's filing date, they cannot be 102(a) prior art.

The only other section on which Examiner can rely is 102(e), which is described at MPEP 706.02(f)(1). The rules for published applications are described at subsection

(I)(B) of 706.02(f)(1). "The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 *if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph.*" (emphasis added)

For applications that claimed the benefit of an international application meeting the requirements of MPEP 706.02(f)(1)(I)(C)(1), as noted in MPEP 706.02(f)(1)(I)(C)(1), to provide the benefit of an earlier-filed U.S. provisional application, "[t]he subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e).

C. An Examiner Must Comply With MPEP 707.05(a), MPEP 707.07 and 37 CFR 1.104(b) to Support an Assertion That A Provisional Application Supports a Portion of a Published U.S. Application, and That Means the Examiner Must Supply Applicants with the Provisional Application in Order to Use

It to Support an Effective Filing Date that is Earlier Than
the Filing Date of the Published Application.

As noted above, Examiner must cite the provisional application in order to use it to support an assertion that a published U.S. application is entitled to an effective filing date earlier than the filing date of the published application. MPEP 707.05(a) requires Examiner to furnish copies of cited references at no charge to applicant.

Additionally, MPEP 707.07 and 37 CFR 1.1.04 states that "The examiner's action *will be complete as to all matters*". Without asserting and backing up any such assertion with the actual provisional application, Examiner's action is not complete.

Nor does it make any sense for the office to allow such a thing: neither Examiner nor applicant has reviewed the provisional applications to determine whether they disclosed the subject matter of the claims. Furthermore, the file history of the published application has been reviewed by neither Applicants nor Examiner to ensure that the published application is entitled to claim priority from the provisional. Is there at least one common inventor? The cross reference information we have doesn't say. Did the application claim priority from the

provisional before the provisional was abandoned? Was the published application filed with all the required elements: at least one claim and the filing fee? Neither the file history nor the provisional is available to us for all of these issues to be checked.

For purpose of traversal, we cannot assume any of this. Therefore, applicant traverses on the basis that we have no evidence of common inventorship between the provisionals and the published applications, we have no evidence that the filing fee and a claim was submitted with the application, and that we have no evidence that the claim for priority was properly made. Furthermore, we traverse on the basis that we have no evidence that the provisionals contain the cited portions of the published applications in a manner that one skilled in the art could make or use the inventions. We have none of this and we cannot assume any of it.

Examiner must allow Applicants to review all references and argue them in the interests of fairness. The provisional applications Examiner relies upon could state almost anything. Nothing in the published applications states that the provisional applications are all identical to the published application, and the fact

that several provisional applications are claimed makes it pretty clear that the earlier ones are unlikely to be carbon copies of the printed application.

It isn't fair for Examiner to simply assume that they state what is stated in the published applications. Examiner is asking Applicants to give up claim scope, and yet, in the end it is entirely possible that either the provisionals that predate applicant's invention don't match the reference application or the reference application is not entitled to the filing date of the provisional, making any change in claim scope to be entirely unnecessary.

Nowhere else is Examiner permitted to make this sort of assumption without showing proof. For example, MPEP 2144.03 requires proof of well known prior art, and the cited references are hardly well known.

The references are not entitled to the dates Examiner has assigned them. Not having provided any rejections based on permissible art, the claims are patentably distinguishable over the cited references.

D. The Effective Filing Dates of the D'Amico and Stewart References Under the Record Provided by Examiner are the Filing Dates of Their Respective Published

Applications, Not the Filing Dates of Any of Their
Respective Provisional Applications.

As noted above, Examiner must employ the provisional applications in his argument under MPEP 706.02(f).

Examiner has not supplied the provisional applications predating Applicants' filing date, and therefore, until Examiner does so, he has not complied with MPEP 707.05.

Because Examiner has neither asserted nor backed up any such assertion with a printed copy of the provisional application, Examiner's action is not complete, and so Examiner has also not complied with MPEP 707.07.

Thus, so far, on the record provided to Applicant, Examiner may only use the filing dates of the both published applications asserted.

D'Amico does not claim the benefit of any international application, and therefore it's effective filing date is its actual filing date, February 9, 2001, unless a prior application properly supports the subject matter used to make the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph.

Examiner has not asserted that any prior application that predates the filing date of the present invention

properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph, nor has Examiner given Applicants any proof that it does, by providing the provisional application and pointing out page and line numbers where the matter used is contained. As a result, D'Amico's filing date is February 9, 2001. Because Applicants' filing date is February 10, 2000, D'Amico is not 102(e) prior art against the present application.

It isn't clear whether Stewart claimed the benefit of an international application, as the filing date of the application is omitted in favor of the PCT filing date, but no benefit is claimed for an international filing. However, as noted above, in either case the provisional application would have to support, under 112, the subject matter used to make the rejection.

Here again, Examiner has not asserted that the provisional applications predating Applicant's application that are claimed by Stewart support under 35 U.S.C. 112 the subject matter used to make the rejection nor supplied any of the provisional applications on which any such assertion would be based as is required by the MPEP. Thus, under the record provided by Examiner, Stewart's effective filing

date is its PCT filing date, November 30, 2000, well after the filing date of Applicants' application.

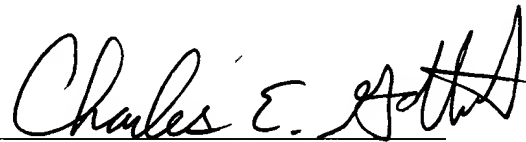
Because the effective filing dates of both of the applications used in the rejection are *after* Applicants' filing date, neither may be used as prior art.

The rejection should be withdrawn and claims 1-15 in the application should be issued.

Respectfully submitted,

July 19, 2004

By:

A handwritten signature in cursive script, appearing to read "Charles E. Gottlieb", written over a horizontal line.

Charles E. Gottlieb

Registration No. 38,164

Innovation Partners

540 University Ave., Suite 300

Palo Alto, CA 94301

(650) 328-0100

9. Claims Involved in the Appeal

1. (original) A method of receiving a subscription to a mutual fund, the method comprising:

receiving a request for a home page;

providing the home page comprising a notice of a
5 subscription offering and a link to a web page;

receiving a request for the web page;

providing web page information allowing a user to
subscribe to the mutual fund responsive to the receiving
the request for the web page; and

10 receiving an indication of an amount of money to be
invested in the mutual fund.

2. (original) The method of claim 1, wherein the
method additionally comprises communicating a total amount
of money to be invested in the mutual fund responsive to
the amount of money received.

3. (original) The method of claim 1 wherein all of the
steps are performed via the Internet.

4. (original) The method of claim 1 wherein the web
page comprises the web page information.

5. (original) The method of claim 1 wherein the web page comprises a link that may be followed to an additional web page comprising the web page information.

6. (original) The method of claim 1, wherein the steps of claim 1 are performed for each of a plurality of users and the method additionally comprises the steps of:

accumulating the amounts of money from each of the
5 plurality of users; and

providing to a mutual fund management the amounts of money accumulated.

7. (original) The method of claim 1, wherein the notice comprises a banner.

8. (original) The method of claim 7 wherein the banner comprises one selected from a scrolling banner and an animated banner.

9. (original) A computer program product comprising a computer useable medium having computer readable program code embodied therein for receiving a subscription to a mutual fund, the computer program product comprising:

5 computer readable program code devices configured to cause a computer to receive a request for a home page;

computer readable program code devices configured to cause a computer to provide the home page comprising a notice of a subscription offering and a link to a web page;

10 computer readable program code devices configured to cause a computer to receive a request for the web page;

computer readable program code devices configured to cause a computer to provide web page information allowing a user to subscribe to the mutual fund responsive to the
15 receiving the request for the web page; and

computer readable program code devices configured to cause a computer to receive an indication of an amount of money to be invested in the mutual fund.

10. (original) The computer program product of claim 9, wherein the computer program product additionally comprises computer readable program code devices configured to cause a computer to communicate a total amount of money
5 to be invested in the mutual fund responsive to the amount of money received.

11. (original) The computer program product of claim 9 wherein all of the computer readable program code devices use the Internet.

12. (original) The computer program product of claim 9 wherein the web page comprises the web page information.

13. (original) The computer program product of claim 9 wherein the web page comprises a link that may be followed to an additional web page comprising the web page information.

14. (original) The computer program product of claim 9, wherein the computer readable program code devices of claim 9 are performed for each of a plurality of users and the computer program product additionally comprises:

5 computer readable program code devices configured to cause a computer to accumulate the amounts of money from each of the plurality of users; and

computer readable program code devices configured to cause a computer to provide to a mutual fund management the
10 amounts of money accumulated.

15. (original) The computer program product of claim 9, wherein the notice comprises a banner.

16. (original) The computer program product of claim 15 wherein the banner comprises one selected from a
5 scrolling banner and an animated banner.